

APR 17 1981

Gentlemen:

Your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code has been considered.

The information submitted discloses that you incorporated [REDACTED] [REDACTED], to represent all of the property owners in [REDACTED] subdivision; to develop a better community through the cooperation, organized effort, and financial support of the property owners; to insure against depreciation of the property values in the subdivision; to collect and expend dues in the interest of the subdivision and to enforce the covenants and restrictions subscribed to by the property owners of the subdivision.

You are authorized to have all the powers enumerated in Article [REDACTED] of the [REDACTED] Non-Profit Corporation Act and are subject to the limitations contained therein.

Your Bylaws state that membership is open to all residents and property owners of [REDACTED] if such pays all dues and assessments. Any member who becomes a non-resident automatically ceases to be a member. You have approximately [REDACTED] members. You have a membership committee, social committee, beautification committee, and restrictions committee.

You state in your application that your activities include enforcing the deed restrictions, moving vacant lots in the subdivision, and keeping your entry signs in good condition.

DATE	APPROVED	REVIEWER	REVIEWER	REVIEWER	REVIEWER
	[REDACTED]				
	3/12/81				

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3)Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1)In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(b)(1)(iii)An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3).
*** "

"(b)(1)(iv)In no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements of other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes."

"(b)(4)Distribution of assets on dissolution. An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal Government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders."

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purpose specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interest such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest."

On the basis of the information available, we have concluded that you are not organized or operated exclusively for one or more purposes as specified in section 501(c)(3) of the Code.

You are organized to represent your members' interests and to protect the property values in the subdivision. These are not purposes under section 501(c)(3) of the Code. You do not have any dedication of your assets to charitable purposes as required by Treasury Regulations 1.501(c)(3)-1(b)(4). Thus you do not meet the organizational test of section 501(c)(3).

Your activities are directed to the personal benefit of your members. You are serving their private interests in that only member landowners/residents may fully participate in your activities. By moving privately owned lots and enforcing deed restrictions, you are serving only the landowners' interests and the general public is receiving little or no benefit.

Accordingly, it is held that you are not entitled to exemption from Federal income tax under section 501(c)(3) of the Code.

It follows, therefore, that contributions to you are not deductible by donors under section 170 of the Code.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible. You should also file the enclosed Federal income tax return(s) within 30 days with the Chief, Employee Plan/Exempt Organization Division 1100 Commerce, Dallas, Texas 75242.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7426(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

As homeowners' association, you may qualify for treatment under section 528, a section of the Code created by the Tax Reform Act of 1976. In this letter we are not ruling on the question of whether you qualify for treatment under section 528. However, if you believe you qualify for such treatment, you should file Form 1120-H when due.

Sincerely,


District Director

Enclosures:
Form 6018
Form 1120
Form 1120-H